



# California Regional Water Quality Control Board Central Coast Region



**Terry Tamminen**  
Secretary for  
Environmental  
Protection

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**Arnold Schwarzenegger**  
Governor

## NOTICE OF PUBLIC HEARING

REVISED on OCTOBER 1, 2004

### CONSIDERATION OF ADOPTION OF NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT WASTE DISCHARGE REQUIREMENTS ORDER NO. R3-2004-0028 NPDES PERMIT NO. CA0050610

#### ISSUED TO DUKE ENERGY NORTH AMERICA MODERNIZED MORRO BAY POWER PLANT, Units 1 & 2 SAN LUIS OBISPO COUNTY

Starting at 9:30 a.m., Thursday, December 2, 2004  
Regional Board Offices

895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401

#### IMPORTANT: WRITTEN TESTIMONY IS DUE MONDAY, NOVEMBER 1, 2004

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For additional information please contact **Michael Thomas** at: (805) 542-4623 or email him at [mthomas@rb3.swrcb.ca.gov](mailto:mthomas@rb3.swrcb.ca.gov) or call **Gerhardt Hubner** at (805) 542-4647. Please bring this notice to the attention of any persons known to you who would be interested in this matter.

A copy of this Notice and the draft NPDES permit, the fact sheet and all submissions to the Regional Board may be reviewed and copied at the office of the Central Coast Regional Water Quality Control Board, **895 Aerovista Place, Suite 101, San Luis Obispo 93401**, on weekdays between the hours of 8:30 a.m. and 4:30 p.m. You can also view and retrieve copies of the draft NPDES permit, fact sheet, hearing notice(s) and other supporting documents at [www.swrcb.ca.gov/rwqcb3/facilites/Duke Energy Morro Bay Plant](http://www.swrcb.ca.gov/rwqcb3/facilites/Duke_Energy_Morro_Bay_Plant)

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#### SUBJECT OF NPDES PERMIT HEARING

The California Regional Water Quality Control Board, Central Coast Region, proposes to issue waste discharge requirements (NPDES Permit No. CA0050610) (draft NPDES Permit) including effluent limitations regulating discharges to waters of the Pacific Ocean from Duke Energy's modernized Morro Bay Power Plant in San Luis Obispo County. The Board will consider whether to issue the permit at the hearing, and may take action on the application. The **oral part of the hearing** will begin at **9:30 a.m. on December 2, 2004 at the Regional Board Offices, 895 Aerovista Place, Suite 101, San Luis Obispo.**

*California Environmental Protection Agency*



## **PROCEDURAL LAW AND REGULATIONS**

The hearing will be conducted pursuant to Title 23 California Code of Regulations (CCR) sections 648 through 648.8 and Government Code sections 11400 through 11470.50 (Administrative Procedure Act, Administrative Adjudication: General Provisions).

## **DESIGNATION OF PARTIES**

Pursuant to Title 23 CCR section 648.1, Designated Parties to this hearing are:

1. **Regional Board staff**
2. **Duke Energy Morro Bay (Discharger)**
3. **The City of Morro Bay**
4. **The Coastal Alliance on Plant Expansion (CAPE).**

All other persons wishing to testify or provide comments are interested persons and not Designated Parties. Interested persons may request Designated Party status for purposes of this hearing by submitting a request in writing. The Regional Board must receive the request no later than **Wednesday, October 20, 2004**. The request must explain the basis for status as a Designated Party and in particular how the person is directly affected by the discharge. Rulings on such requests are within the sole discretion of the Chair of the Regional Board. All designated parties must comply with the deadlines below for submitting direct testimony, evidence and argument, and rebuttal testimony, even if the Chair has not yet ruled on a pending request for designated party status.

Designated Parties may present written evidence and legal argument before the hearing and may cross-examine witnesses and make closing statements during the hearing.

## **HEARING PARTICIPATION BY DESIGNATED PARTIES**

Designated Parties will submit evidence and legal argument and participate in cross-examination in the hearing only in compliance with the following procedures. Submissions by Designated Parties shall be confined to issues relevant to the draft NPDES permit and only matters within the Board's jurisdiction.

Designated Parties making the same arguments are encouraged to submit testimony, evidence and argument jointly.

## **Direct Testimony, Evidence and Argument**

Parties (including Regional Board staff) shall **submit to the Regional Board and other Parties** (unless otherwise noted) so they are **received on or before 5:00 p.m. on Monday, November 1, 2004:**

1. Sixteen copies to the Regional Board and one copy to each other Designated Party of each Designated Party's direct testimony and supporting legal and policy arguments. Testimony may include expert opinions and analysis. Testimony may also include analysis of studies, reports and scientific literature. Staff's testimony may be in the form of a staff report. All direct testimony, including expert opinion and analysis, must state whether the person providing the testimony will attend the hearing.

## NPDES Permit

## Duke Energy Morro Bay Power Plant

2. Sixteen copies to the Regional Board and one copy to each other Designated Party of exhibits each Designated Party intends to refer to at the hearing. "Exhibits" include any documents, reports or other evidence that a Designated Party will refer to at the hearing. Reduced sized copies of large maps or illustrations may be submitted. Visual or audio aids (e.g., slides, video tapes, or Power Point presentations) that will be used to aid with summary presentations or arguments at the hearing need not be provided. **Visual/audio aids may only be used at the hearing to summarize a Designated Party's direct testimony, legal argument, or policy argument, as submitted by the due date. Visual/audio aids shall not be used to present information that was not submitted by the due date.** The following California Energy Commission documents (among other documents) are already part of the administrative record: Final Staff Assessment and Third Revised Presiding Member's Proposed Decision. Designated Parties need not provide sixteen copies of these documents, but must provide copies of excerpts as required by paragraph 3.
3. Sixteen copies to the Regional Board and one copy to each other Designated Party of excerpts of documents or evidence, **other than** testimony, from the existing administrative record or new submissions that each Designated Party refers to in its testimony or legal argument so that the Board members can easily refer to the relevant reference.
4. Sixteen copies to the Regional Board and one copy to each other Designated Party of a list of documents or evidence, **other than** testimony, each Designated Party would like added to the Administrative Record but does not intend to refer to at the hearing. The Administrative Record includes all public Board files and agenda material (including material from the Board's May 30, 2002 workshop) pertaining to this matter, all testimony, evidence and comments submitted by Designated Parties and interested persons prior to the hearing, and the hearing tape and/or transcript.
5. To the Regional Board only, one complete copy of each document, study, report, audiotape, videotape or other evidence, each Designated Party would like added to the Administrative Record. Upon request of another Designated Party, each Party shall provide a copy of any document, study, report, or tape to the requesting Party.
6. To the Regional Board only, one electronic copy in Adobe Acrobat (pdf) or Microsoft Office (Word, Excel, Access or PowerPoint) format of each study, testimony, report or other document prepared by or on behalf of the Designated Party. Designated Parties may request an exception if the party claims that submitting an electronic copy would reveal trade secrets or other protected information. Parties are also requested, but not required, to provide one electronic copy of any other documents the Designated Party will introduce, e.g., scientific articles or documents of another public agency. A searchable format is requested for all electronic copies. Upon request of another Designated Party, each Party shall provide a copy of any electronic document to the requesting Party.

If submittal of sixteen copies of items 1. through 4 is too burdensome for a Designated Party, this requirement may be waived by the Executive Officer upon request, which must be made not later than **Monday, November 1, 2004.**

Absent a showing of good cause satisfactory to the Chair, direct testimony, evidence, arguments and exhibits that do not comply with the above requirements will be excluded from the Administrative Record.

**Rebuttal Evidence and Argument**

Rebuttal testimony, other evidence and legal arguments shall be limited to responses to direct testimony, evidence and legal arguments offered by other Designated Parties. **Rebuttal is not an opportunity to raise new issues.** The Chair will have the discretion to strike any rebuttal testimony, evidence or legal argument that does not comply with this requirement.

Parties shall **submit to the Regional Board and other Parties** (unless otherwise noted) so that **it is received on or before 5:00 p.m. on Monday, November 15, 2004**:

(The same details regarding direct evidence and argument, in the items above apply to rebuttal evidence and argument.)

1. Sixteen copies of each Designated Party's rebuttal testimony and supporting legal and policy arguments. All rebuttal testimony must state whether the person providing the testimony will attend the hearing.
2. Sixteen copies of rebuttal exhibits each Designated Party intends to refer to at the hearing.
3. Sixteen copies of excerpts of documents or evidence, other than testimony, from the existing administrative record or new submissions that each Designated Party refers to in its rebuttal testimony or legal argument so that the Board members can easily refer to the relevant reference.
4. Sixteen copies of a list of documents or evidence, other than testimony, each Designated Party wants to enter into the record by way of rebuttal evidence.
5. One copy, to the Regional Board only, of each document, study, report, audiotape, videotape or other evidence, each Designated Party would like added to the Administrative Record as rebuttal evidence. Upon request of another Designated Party, each Party shall provide a copy of any document, study, report, or tape to the requesting Designated Party.
7. One electronic copy, to the Regional Board only, in Adobe Acrobat (pdf) or Microsoft Office (Word, Excel, Access or PowerPoint) format of each study, testimony, report or other document prepared by or on behalf of the Designated Party. Designated Parties may request an exception if the party claims that submitting an electronic copy would reveal trade secrets or other protected information. Parties are also requested, but not required, to provide one electronic copy of any other documents the Designated Party will introduce, e.g., scientific articles or documents of another public agency. A searchable format is requested for all electronic copies. Upon request of another Designated Party, each Party shall provide a copy of any electronic document to the requesting Party.

If submittal of sixteen copies of items 1. through 4. is too burdensome for a Designated Party, this requirement may be waived by the Executive Officer upon request, which must be made not later than **Monday, November 7, 2004**.

Absent a showing of good cause satisfactory to the Chair, rebuttal testimony that does not comply with the above requirements will be excluded.

Submissions to the Regional Board shall be addressed to:

Michael Thomas

**NPDES Permit  
Duke Energy Morro Bay Power Plant**

Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401  
Fax: (805) 543-0397  
Phone: (805) 542-4623  
E-mail: [mthomas@rb3.swrcb.ca.gov](mailto:mthomas@rb3.swrcb.ca.gov)

Submissions to Duke Energy shall be addressed to:

Christopher Ellison  
Ellison, Schneider & Harris, L.L.P.  
2015 H Street  
Sacramento, California 95814  
Phone: 916-447-2166  
Fax: 916-447-3512  
Email: [cte@eslawfirm.com](mailto:cte@eslawfirm.com)

Submissions to City of Morro Bay shall be addressed to:

Rob Schultz  
City Attorney  
955 Shasta Ave.  
Morro Bay, 93442  
Phone: (805) 772-6568  
E-mail: [rschultz@morro-bay.ca.us](mailto:rschultz@morro-bay.ca.us)

Submissions to CAPE shall be addressed to:

Michael R. Lozeau  
Earthjustice  
553 Salvatierra Walk  
Stanford, CA 94305-8620  
Tel: (650) 725-4217  
fax: (650) 725-8509  
E-mail: [mlozeau@earthjustice.org](mailto:mlozeau@earthjustice.org)

**COMMENTS BY INTERESTED PERSONS (NON-DESIGNATED PARTIES)**

All interested persons who have not been designated as parties may present comments to the Regional Board.

A comment is a non-evidentiary statement. It may include (1) the policy views and position of the speaker, (2) non-expert analysis of evidence that already has been presented, or (3) argument concerning the contents of draft documents. Comments may also include data regarding the draft NPDES Permit. Persons who wish to make comments may do so, subject to the following provisions:

Interested persons are encouraged to submit **written comments**. Written comments must be received by the Regional Board by **Wednesday, November 10, 2004**. Written comments must be addressed to the Regional Board at the address above, attention Michael Thomas. Unless there is a showing of good cause for late submission satisfactory to the Board Chair, written comments received after the due date will not

***California Environmental Protection Agency***

**NPDES Permit****Duke Energy Morro Bay Power Plant**

be considered by the Board and will not be included in the Administrative Record. Designated Parties may submit to the Regional Board and other Parties written responses to comments by non-parties not later than **Monday, November 22, 2004**.

Interested persons may make oral comments at the hearing on **Thursday, December 2, 2004**. Each person's time for oral comments will be limited to **three minutes**. Comments shall be confined to the draft NPDES Permit and only to matters within the Board's jurisdiction.

Persons making comments will not be sworn or asked to affirm the truth of their statements. At the discretion of the Chair, questions may be addressed to persons making only comments for the purpose of clarifying their statements. However, such persons shall not be subject to cross-examination and may not cross-examine hearing witnesses or interested parties.

**ADDITIONAL PROCEDURES BEFORE ORAL HEARING**

Regional Board legal counsel may provide written legal advice to the Board at any time. The Regional Board is required by federal regulations to prepare written responses to comments no later than the date the NPDES Permit becomes final. (40 C.F.R. section 124.17.) Thus, staff may prepare responses to comments and evidence (including rebuttal testimony) submitted by the Parties and submit a copy to the **Board members and other Parties at any time before or during the hearing**. Parties may use part of their oral presentation at the hearing to respond to public comments and the staff response to comments and analysis of evidence. Board members may request written responses to their questions prior to the oral hearing and may ask questions anytime during the hearing.

**CONDUCT OF HEARING**

All witnesses who testify at the hearing may be cross-examined by other parties. Cross-examination is not limited to matters covered in direct testimony or written submissions. This does not apply to commenters.

All persons who have submitted written direct testimony shall be present at the hearing to affirm their testimony under oath, or the Board Chair may exclude or limit the testimony. If a person who has submitted testimony is not present, the Chair may refuse to admit the proposed testimony into evidence, and shall refuse to do so where there is a showing of prejudice to any party or the Regional Board, unless a party demonstrates that compliance would create a severe hardship, or the Chair waives this requirement. A request to exclude direct testimony pursuant to this paragraph must be made by **November 8, 2004**, if the direct testimony states that the witness will not be present.

The Board Chair may also continue the hearing for the purpose of conducting cross-examination or Board questions of the absent witness, accept the submission as hearsay evidence rather than witness testimony pursuant to Evidence Code section 11513, or waive the requirements of Evidence Code section 11513 pursuant to California Code of Regulations, Title 23, Section 648. Section 11513 provides that hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but over timely objection shall not be sufficient in itself to support a finding. A hearsay objection is timely if made before the close of the hearing.

Each Designated Party's representatives will have an opportunity to present a summary of the Party's direct and rebuttal testimony. The summary need not be presented by a witness. After each Designated Party completes its testimony summary and any legal arguments, each of that Party's witnesses will be subject to cross-examination by all other parties.

**NPDES Permit  
Duke Energy Morro Bay Power Plant**

After all summaries of direct testimony and cross-examination are complete, non-parties will have an opportunity to make comments.

After non-parties complete comments, all parties will have an opportunity to present closing statements.

The following time limitations will apply unless modified by the Regional Board Chair at the time of the hearing:

Regional Board staff, Discharger, the City of Morro Bay and Coastal Alliance for Plant Expansion will each have a total of **40 minutes** to summarize direct and rebuttal testimony and other evidence submitted in advance and to cross-examine other Party's witnesses. Each Designated Party may allocate their 40 minutes as they choose, as long as they do not exceed the total allocation.

Each Designated Party will have an additional **5 minutes** for closing statements in addition to any left over time from the initial 40 minute allocation.

Designated Parties with similar interests are encouraged to make joint presentations. Designated Parties who wish to make joint presentations may request, in writing, to combine their allotted time. The Regional Board must receive the request by **Monday, November 29, 2004**. The Chair will rule on such requests prior to the commencement of the hearing.

Board member's and Board legal counsel's questions are in order at any time but they will be asked to hold their questions until the end of each Party's presentation in order to facilitate measuring the time allocation. The Chair may rule inadmissible or out-of-order testimony and cross-examination that is irrelevant, repetitive, or disruptive of the orderly conduct of the hearing.

Regional Board members or staff may invite other agencies that regulate the Duke Energy Morro Bay Power Plant or that may regulate an alternative cooling water system for the power plant to provide advice and evidence on the record to assist the Board in making its decision. Such advice may be provided any time before or during the hearing.

The Board may continue the hearing and may require or permit submission of additional comments, evidence or argument at their discretion.

### **ORDER OF PRESENTATION**

1. Regional Board staff summary of direct and rebuttal testimony, evidence and legal argument.
2. Cross-examination of staff witnesses by other parties.
3. Discharger summary of direct and rebuttal testimony, evidence and legal argument.
4. Cross-examination of Discharger's witnesses by other parties.
5. City of Morro Bay summary of direct and rebuttal testimony, evidence and legal argument.
6. Cross-examination of the City of Morro Bay witnesses by other parties.
7. CAPE summary of direct and rebuttal testimony, evidence and legal argument.
8. Cross-examination of CAPE witnesses by other parties.

9. Opportunity for non-parties to make comments.

10. Closing statements by Regional Board staff, Discharger, the City of Morro Bay, and CAPE.

There will be a number of short breaks at the discretion of the Chair. If necessary, the Chair may call for a lunch and dinner break.